

ESTATE PLANNING FOR MILITARY MEMBERS

PART A

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ESTATE PLANNING FOR MILITARY MEMBERS

PART A

Outline of Instruction

I. INTRODUCTION.

A. The need for coordinated military estate planning.

B. Understanding the estate planning process:

“The process by which an arrangement for the use, conservation, and transfer of one’s wealth is created.”

C. Primary objectives of estate planning are:

1. To secure to the property owner during his lifetime maximum benefits from the possession and use of his property, and
2. To enable that property owner to transfer that property to surviving beneficiaries with a minimum of shrinkage from death taxes and other transfer costs.

D. Goals of military estate planning.

1. Effective planning, or
2. Informed referral expertise.

II. ESTATE PLANNING GOALS.

A. Lifetime Estate Planning.

1. Maximize accumulation of wealth (“Estate Building”).
2. Protect estate from loss (“Asset Protection”).
 - a. Plan for contingencies.
 - b. Incapacity or disability.

B. Dispositive Estate Planning (“Wealth Transfer”).

1. Provide for the transfer of property according to the decedent’s wishes.
2. Minimize delay and inconvenience.
3. Reduce administrative costs.
4. Provide liquidity during probate of the estate.
5. Reduce federal and state tax liability.
6. Provide for the care of minor children and their property.
7. Finally, the estate planner wants to prepare effective documents, which contain the client’s intent and carry out the client’s desires.

III. ESTATE PLANNING STEPS.

A. Consider Ethical Preliminaries.

"In all professional functions a lawyer should be competent, prompt, diligent, and honest. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client, except so far as disclosure is required or permitted . . ." (AR 27-26, para 6c).

1. Competence (Rule 1.1).

a. Legal assistance attorneys must provide competent representation.

(1) No special training required.

(2) Consists of skill, knowledge, thoroughness, and preparation necessary for representation.

b. Supervisors determine subordinates competency to perform duties.

c. Lawyers should refer matters outside their competence, i.e., complex estate planning, to specialists in the civilian community (AR 27-3, para 3-7h).

2. Communication (Rule 1.4).

a. A lawyer must keep a client reasonably informed about the status of a matter.

b. A lawyer must explain a matter to a client to the extent necessary to permit the client to make an informed decision regarding representation.

c. Communicate effectively, use checklists (see appendices), listen to the client's desires, and establish scope of representation.

d. Competency of the client.

- (1) A lawyer shall attempt to maintain normal lawyer-client relationship with a client even if the client's ability to make decisions is impaired.
- (2) A lawyer may seek guardianship or other protective action if the lawyer reasonably believes the client cannot act in the client's best interests (Rule 1.14).

3. Conflicts of interest.

"Conflict questions may also arise in estate planning. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise" (Rule 1.7, Comment).

- a. Dual representation in estate planning generally accepted. Prior to undertaking representation, the lawyer should obtain each client's consent after full consultation. A sample multiple-representation letter is at Appendix A.
- b. Watch for conflicts that cannot be resolved.

4. Terminating the relationship.

- a. A lawyer may have a duty to advise a client of any changes that might defeat a client's testamentary goals (ABA Formal Op. 210).
 - (1) Ensure the client understands when the attorney-client relationship is terminated.
 - (2) "Debrief" the client.
- b. A lawyer must take reasonable steps to protect the client's interests upon termination to include giving notice and surrendering all papers and property (Rule 1.16).

5. Potential Malpractice Areas.
 - a. Faulty drafting.
 - b. Failure to revise plan.
 - c. Improper execution.
 - d. Failure to complete documents.
 - e. Failure to understand and implement substantive law.

B. Gather Information on the Client and Family.

1. Use a checklist (see Appendix B).
2. Conduct a thorough client interview using an estate-planning questionnaire (see Appendix C).
 - a. Development of a sound estate plan depends on full disclosure by the client.
 - b. The attorney should probe into the members of client's family and determine their strengths, weaknesses, and goals.
 - c. Develop and use an estate-planning questionnaire for your clients.
3. Some specific areas of inquiry.
 - a. Is client married?
 - (1) Is there an ante-nuptial agreement?
 - (2) Does the spouse have right of election?

- (3) Does the spouse have any special needs?
- (4) Is the spouse a non-U.S. citizen?
- (5) Is either spouse a domiciliary of a community property state?

b. Has client been divorced?

- (1) Review separation agreement or divorce decree.
- (2) Does ex-spouse have any claim to the estate?
- (3) Are there any children by a former marriage?

c. Does the client have children?

- (1) Are any children under a disability?
- (2) Does the client intend to benefit after-born children?
- (3) Are children all born of present marriage?

C. Obtain a Complete Inventory of Assets.

- 1. Detailed information on the client's assets (and spouse if dual representation) (See Appendix C).
- 2. Distinguish type of ownership.
- 3. Estimate present value and probable date of death value of all assets (estimate "gross estate") (See Estate & Gift Taxation outline).
- 4. Determine if any property will require ancillary probate proceedings.

5. Ascertain if there are restrictions on the ability to transfer any asset.
 6. Classify assets according to how they will be distributed.
 - a. Probate.
 - b. Non-probate property.
- D. Develop an Appropriate Estate Plan.
1. Establish client's needs and goals.
 2. The estate owner's objectives are the most important step in the estate planning process. To formulate a sound estate plan, the plan must be constructed on the foundation of the owner's objectives. See Appendix D, Beneficiary Objectives.
 3. At least five professions are involved in estate planning:
 - a. The attorney,
 - b. The accountant,
 - c. The life insurance underwriter,
 - d. The trust officer, and
 - e. The financial planner.
 - f. In addition, an investment adviser and an appraiser may from time to time become involved in the estate planning process.

- g. While each of these practitioners has different duties and responsibilities, a team approach should be encouraged. In this way, the estate owner will benefit from the expertise of each profession, and each practitioner will contribute his or her knowledge and skills to the best advantage of the public.
- 4. Suggest methods of reducing liabilities.
- 5. Consider methods to increase value of the estate or improve liquidity.
- 6. Consider using alternatives to probate.
- E. Prepare, review, and properly execute documents to implement and coordinate the estate plan.
- F. Complete the Representation.

IV. MILITARY ESTATE PLANNING.

- A. Scope of Services.
 - 1. Regulatory guidance
 - a. Army: see AR 27-3 at Appendix E.
 - (1) Estate planning services provided: see paragraph 3-6b.
 - (2) Limitations on estate planning services: see paragraph 3-6b.

“Legal assistance may be provided on other aspects of estate planning based on the availability of expertise and resources.”

- b. Navy-Marine Corps, see JAGINST 5801.2 at Appendix F.
 - (1) Estate planning services provided: see paragraph 7-2a-d.
 - (2) Limitations on estate planning services: see paragraph 7-2a-d.
- c. Air Force, see AF Instruction 51-504 at Appendix G and TJAG Policy Number 18 at Appendix H.
 - (1) Estate planning services provided: see AFI 51-504, paragraph 1.3.1; AF TJAG Policy No. 18, paragraph 5.
 - (2) Limitations on estate planning services: AF TJAG Policy No. 18, attachment on Will Preparation and Execution Guidelines.
- d. Coast Guard: see COMDTINST 5801.4C at Appendix I.
 - (1) Estate planning services provided: see paragraph 6.
 - (2) Limitations on estate planning services: see paragraph 7d.

2. Legal assistance will be provided on:
 - a. Wills.
 - (1) Testamentary trusts for the benefit of minors.
 - (2) Guardianships.
 - (3) Life insurance beneficiary designations (SGLI).
 - b. Advance Medical Directives.
 - (1) Living Wills.
 - (2) Health Care (Durable) Powers of Attorney.
 - c. Durable Power of Attorney (general or specific).
 - d. Anatomical gift designations.
3. Optional services (consult applicable service legal assistance regulation for limitations).
 - a. Wills.
 - (1) Credit Shelter or by-pass trusts.
 - (2) Use of disclaimers.
 - (3) Marital Deduction Trust.
 - (a) Qualified Terminable Interest Property (QTIP) trust.

(b) Qualified Domestic Trusts (QDOTs).

(4) Special needs trusts.

- b. Tangible Personal Property Memorandums (TPPMs).
- c. Letter or memorandum to personal representative or executor.
- d. Review and update beneficiary designations.
- e. Review and update property ownership.
- f. Mortuary planning document.
- g. Inter vivos trusts.
- h. Life insurance trusts.
- i. Probate.

B. Deployment preparation of estate planning documents.

- 1. Attorneys may draft powers of attorney and simple wills during deployment processing. They should, however, follow up to ensure that soldiers return for more complete legal assistance (AR 27-3, para 3-6b(2)(a)).
- 2. Commanders should not require soldiers to complete legal documents. Client determines whether (s)he wants legal document(s) prepared.
- 3. It is not appropriate to interview for or draft wills during deployment exercises unless it is done while maintaining client confidentiality. Moreover, there must be sufficient time to conduct an interview (AR 27-3, para 3-6b(2)(a)).

4. Priority and allocation of legal services should be based on need (AR 27-3, para 3-6b(2)(b)). When legal resources are limited, the following service members should receive priority for drafting and executing wills:
 - a. Those who have a minor child;
 - b. Those whose primary beneficiary is a minor;
 - c. Those whose net estate (excluding insurance, jointly owned property, and other non-probate property) is valued at more than \$10,000; or
 - d. Those who desire their property to be distributed in a manner different from that which would occur under the applicable laws of intestate succession or under an existing will.
5. How to handle more complex estates during deployment preparation of estate planning documents?
6. Same standards for professional responsibility apply to deployment scenarios as standard preparation of documents.

C. Preventive law programs.

1. Legal assistance offices should make an aggressive effort to ensure that service members and their families are adequately prepared for deployment (installation newspaper, command bulletin, radio, TV, Internet websites, etc.).
2. Inform service members and their families about the advisability of keeping their personal affairs current. Remind them about the need for periodically reviewing their wills, powers of attorney, and insurance beneficiary forms.
3. Unit presentations.
4. Annual legal checkups.

D. Improving Office Efficiency.

1. Specialization.
2. Referrals (see AR 27-3, para 3-7h).
3. Computer assisted wills.
4. Use handouts and videotapes.

V. DL WILLS PROGRAM.

A. Trusts:

1. Testamentary trusts (including for minor children).
2. Marital Deduction trust. The Marital Deduction Trust may be QTIP, QTIP with a limited power of appointment, general power of appointment, or “estate trusts.” Qualified Domestic Trust (QDOT) provisions may be included. Two marital deduction trusts may be provided to facilitate allocation of the Generation Skipping Tax exemption.
3. Credit Shelter Trusts (both formula trusts and disclaimer trust). Credit shelter trust may be pre-residuary, residuary or fractional shares of the residuary.
4. Pour-Overs to Inter vivos trusts.
5. Provisions granting or exercising powers of appointment, purchases of annuities, and charitable trusts.
6. The residuary may be divided into equal shares with each share being given to the beneficiaries outright or in a variety of trusts. Trusts may be terminated or partially liquidated at specific ages.

B. Guardian for minor children.

- C. Other options address disposition of realty, personal effects, cash bequests, sprinkling trusts, presumptions of survivorship, fiduciary bonds, disclaimers, disinheritance, pension plans, oil and mineral rights, apportionment of taxes, etc.
- D. The program also prepares:
 - 1. Advance Medical Directives (Living wills) and health care documents.
 - 2. Powers of Attorney.
 - 3. Asset summaries.
 - 4. Execution checklists.
 - 5. Tangible Personal Property Memorandums (TPPM).

VI. SUMMARY OF ESTATE PLANNING MULTI-STEP PROCESS

- A. Education.
- B. Ascertain.
- C. Plan.
- D. Draft.
- E. Explain and review.
- F. Revise and refine.
- G. Execute.

VII. CONCLUSION.

APPENDIX A

**SAMPLE DUAL REPRESENTATION LETTER
FOR NEW ESTATE PLANNING CLIENTS**

Re: Your Estate Plan

Dear Mr. and Mrs. _____:

This will confirm the following:

1. You have requested that I represent each of you and advise you on certain estate planning matters.
2. It is contemplated that the matters to which my representation will extend will include the following: (Choose from the following or modify as appropriate.)
 - a. Analysis of your existing wills, codicils, trust agreements, and property agreements if any;
 - b. Analysis of the assets owned by each of you at the time of your marriage, including consideration of the fair market value of such property and the nature in which title was then held;
 - c. Analysis of all property now owned by each of you, including consideration of its fair market value, the manner in which title to such property is now held, and a categorization of such property as separate, community, or quasi-community property;
 - d. Discussions about the manner in which you wish to dispose of any property over which you may have any power of disposition at the time of your death;
 - e. Analysis of the tax impact of such disposition and recommendations for alternative dispositions; and
 - f. Preparation of the documents necessary to accomplish the desired disposition, including the drafting of wills, trusts, property agreements, and other documents as may be required.
3. I have advised each of you that, during the course of the estate planning work, conflicts may arise between you with respect to the ownership of your property (separate, community, or quasi-community property) and its desired disposition during your lifetimes and at your deaths. Differences of opinion on the disposition of the property, under ethical rules, do not prevent me from continuing to represent both of you. However, during the course of the estate planning, conflicts of interest between you may arise, such as issues regarding the ownership of certain property.

Ordinarily, under such circumstances, one attorney cannot represent both of you. It may be better for each of you, under such circumstances, to have separate independent counsel to avoid the possibility that my advice to one of you is influenced by my representation of the other. Nevertheless, you have requested, with a full understanding of your right to, and the advantages of, independent counsel, that I represent both of you in all of the above matters.

4. Although I doubt that it will happen, if conflicts do arise between the two of you of such a nature that I believe it impossible, in my judgment, for me to perform any obligations to either of you in accordance with this letter, I will withdraw from all further dual representation of both of you in this matter at that time and advise one or both of you to obtain independent counsel.

5. You have each agreed that there will be complete and free disclosure and exchange of all information that I receive from either or both of you in the course of my representation of you, and that such information shall not be confidential between you irrespective of whether I obtain such information in conferences with both of you or in private conferences with only one of you, including any conferences that may have taken place before the date of this letter.

Sincerely,

(Attorney's Signature Block)

APPROVED THE ____ day of _____, 19__

(Signature of husband; typed name below)

(Signature of wife; typed name below)

APPENDIX B

ESTATE PLANNING CHECKLIST

1. General.

- (a) Has/Have the estate(s) wisely used the marital deduction and given adequate consideration to the use of trusts that will provide income for life to the surviving spouse, but enable maximum use of the unified credit by the estate of the first spouse to die? [Failure to qualify sufficient property for the marital deduction may result in an unnecessary tax burden at the estate owner's death. Over-qualification will tend to increase the federal estate tax due upon the surviving spouse's death.]
- (b) Would a gift program be advisable?
- (c) Is either the husband or wife the current or anticipated beneficiary of other estates or trusts? Has the effect of potential inheritances been considered in the planning process?
- (d) Are there any business interests or other assets that would require immediate attention following the estate owner's death?
- (e) Has a current inventory of estate assets been prepared to assist the executor?
- (f) Are the estate owner's wishes regarding burial and other personal matters (as opposed to binding dispositions of property) reflected in a letter or written memorandum kept with other important papers?
- (g) Are liquid assets available?
- (h) Are the names of all beneficiaries correct? [This is especially important with respect to charities.]
- (i) Has the corporate fiduciary, if any, been informed of its selection, reviewed the instrument, and accepted the instrument?
- (j) Have the settlor's insurance policy beneficiaries been changed in accordance with the estate plan?
For example, are policies made payable to the estate or the trustee if called for in the plan?)

2. Wills and trusts.

- (a) Have current dispositive instruments been executed by both husband and wife?
- (b) Have the formalities of execution required by the state of domicile been *met*?
- (c) Will ancillary administration be required?
- (d) If an individual executor or trustee has been notified, has he or she agreed to accept this responsibility? Have an alternate and/or a successor been designated? Will the individuals named as executor and trustee, if any, qualify under the laws of decedent's domicile?
- (e) Has a guardian been appointed (or nominated) for minor children? Will the guardian qualify under the laws of decedent's domicile?
- (f) If a corporate fiduciary has been designated, will the corporate fiduciary qualify under the laws of decedent's domicile?
- (g) Is the fiduciary to be bonded?

3. Property ownership.

- (a) Is title to any property held in joint tenancy with right of survivorship? Does the estate plan contemplate the fact that joint tenancies may nullify certain testamentary dispositions and may result in unintentional over-qualification for the marital deduction?
- (b) Are any assets held as community property? One-half of each asset held as community property is "owned" by each spouse by operation of law. This fact is important in valuing the estates of community property state domiciliaries.
- (c) Do the estate owners hold a beneficial or reversionary interest in any property? Such interests are easily overlooked unless specific inquiries are made. Their effect on the potential estate tax and the liquidity requirements of the estates of both husband and wife should be considered.

4. Military, veterans, and social security benefits.

- (a) Has a schedule of potential benefits to survivors been prepared? [The nature, amounts, and eligibility requirements for these benefits are subject to frequent modification.]
- (b) Has a survivorship annuity been elected under the Survivor's Benefit Plan?
- (c) Are beneficiary designations for all military and veteran's benefits current?
- (d) Has the estate owner been reminded that eligibility for certain social security and veteran's benefits may be forfeited if the surviving spouse supplements other income by working?
- (e) Are any benefits available to the estate owner's survivors by virtue of any civilian employment in which he or she has engaged?

5. Life insurance.

- (a) Has the ownership of policies on the estate owner's life been ascertained? Are contingent owners designated? Would transfers of ownership be advantageous?
- (b) Does the estate owner hold any policies on the lives of others? Would contingent ownership be advisable to keep such policies out of the estate owner's probate estate?
- (c) Are all beneficiary designations current and properly designated?
- (d) Has the use of settlement options been considered? Even when the proceeds are to be paid in a lump sum, it is often advisable for the insured to elect to have the proceeds placed under the "interest only" option, giving the beneficiary full withdrawal rights and the right to elect other options. This gives the beneficiary maximum flexibility. It assures that interest will be credited from the date of death to the date of actual withdrawal, and gives the beneficiary time to obtain advice before being required to make any irrevocable decisions with regard to the ultimate disposition of the proceeds.
- (e) Do any settlement options elected by the insured include "spendthrift" provisions?

- (f) Do policy provisions and the provisions of state law regarding presumptions as to survivorship coincide with any presumptions established in the dispositive instruments? Has a "delay" clause been considered? "Delay" clauses provide for payment to the primary beneficiary only if such beneficiary survives the insured by a specified period of time. A clause of this type is frequently used to avoid adding to the costs of probating the beneficiary's estate when the beneficiary's death occurs shortly after that of the insured. Periods of 30 to 180 days are usually specified. The proceeds will not qualify for the marital deduction, however, if the survivorship requirement exceeds 180 days.
- (g) Will policy loans or collateral assignments interfere with the planned distribution of insurance proceeds?
- (h) Have any policies on the insured's life been transferred for valuable consideration? Such a transfer may cause part of the death proceeds to be taxed as ordinary income to the beneficiary (See I.R.C. § 101(a)).
- (i) Do any policies include options, endowment features, conversion privileges, supplemental benefits, or other provisions that deserve special consideration or require action by the policy owner? An Automatic Premium Loan, for example, is included in many policies to prevent the policy from lapsing due to the insured's failure to make a scheduled premium payment prior to the expiration of the grace period. If it is not included in the policy at the time of issue, most companies will add it, without cost, at the policy owner's request.
- (j) Are policy dividends being applied under the most favorable dividend options? Which dividend option is "most favorable" will depend upon the insured's situation. If an individual's longevity is significantly impaired, he or she should consider having dividends applied toward the purchase of paid-up additional insurance.
- (k) Is additional insurance needed to ensure estate liquidity or to provide a guaranteed level of income for surviving family members? Have all aspects of the estate plan been coordinated (or reviewed) by an attorney who is thoroughly conversant with the laws of the jurisdiction in which probate proceedings will be carried out?

APPENDIX C

ESTATE PLANNING SCREENING QUESTIONNAIRE

PERSONAL INFORMATION

NAME: _____ DATE: _____

Circle or fill in your answers		
1. Do you have a will or trust now?	Yes	No
2. If married, is your spouse a U.S. citizen?.....	Yes	No
3. Do you have children other than from your current marriage?	Yes	No
4. Are you receiving or do you expect to receive property or money from (circle all that apply): If so, approximately how much?	Trust Inheritance Gift Lawsuit Other	
5. Do own a home or other real property?	Yes	No
6. If you own a home or other real property, what is the approximate equity value?	\$	
7. Do own investments? (stocks, bonds, mutual funds, etc...).....	Yes	No
8. If you own investments, what is the approximate value?	\$	
9. Do own life insurance?	Yes	No
10. If you own life insurance, what is the face value of all policies?	\$	
11. Do you have a retirement account (401(k), TSP) or more than 20 years time in service?	Yes	No

**JOINT SERVICES
PENTAGON LEGAL
ASSISTANCE OFFICE**

**WILLS, LIVING WILLS, AND
POWERS OF ATTORNEY**

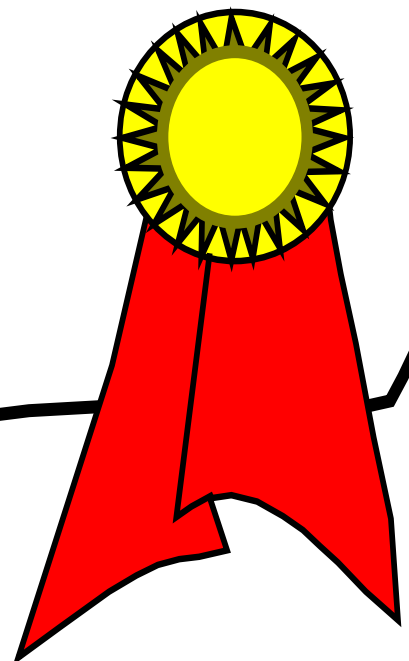
CLIENT QUESTIONNAIRE

FOR: _____

DATE AND TIME OF APPOINTMENT

ATTORNEYS NAME

**PENTAGON
ROOM 1D738
(703) 693-0107**



INSTRUCTIONS FOR OBTAINING A WILL

1. Please complete the attached will worksheet to the best of your ability prior to your appointment with a legal assistance attorney from the Joint Services Pentagon Legal Assistance Office in room 1D738.
2. You may schedule an appointment to see an attorney by calling 703/693-0107 or -0110 (DSN 223-0107 or -0110), or you can stop by room 1D738.
3. Please be prompt for your appointment. If you are delayed or cannot make your appointment, please call us as soon as possible to cancel, reschedule, or let us know how late you will be.
4. An attorney must interview each person before the will is prepared. If both you and your spouse need a will, you may be seen together so long as you have both seen and discussed each other's worksheets, and agree on the contents. Also, please let us know when you schedule your appointment if you would like to be seen together.
5. Please bring the following documents with you for your appointment:
 - a. A completed will worksheet. (A separate worksheet is needed for the preparation of each person's will.)
 - b. A **copy** of your current will, if possible (for reference purposes only). Please avoid bringing any existing, original will, and do not mark on it in any case, because doing so could invalidate it.
 - c. A list of any questions you may have for the attorney.
 - d. Your military identification card.
6. During your appointment, an attorney will review the will worksheet with you and answer any questions that you may have. After your appointment, we will prepare a draft copy of your will and either mail it to you or call you to pick it up from our office. Once you have reviewed the draft of your will, you can call us to make any minor corrections and to schedule an appointment to execute your will. If major corrections or changes are needed, please call for a follow-up appointment with the attorney that you have already seen. Will execution sessions are scheduled every Wednesday for 0830, 0930, 1030, and 1130.
7. The final step is the "execution" or signing of your will. The will execution session requires certain formalities to include a final review of the documents, the administration of oaths, the actual signing of the will, and the witnessing of such signatures, and a final briefing, all of which are time consuming. You should show up 15 minutes before your execution appointment to review the final version of your documents if you asked us to make changes to your will when you called to schedule your execution appointment. Plan on spending about one hour for the

actual execution session. We schedule up to four clients for each will execution session. Each person signs their own documents and acts as a witness for two of the others. This avoids the need for you to bring your own witnesses or to rely on our staff to act as witnesses. If you would prefer to bring your own witnesses, or you cannot possibly make a will execution session on a Wednesday, your attorney can arrange a special appointment for you to execute your documents at another time.

8. You must bring your military identification card with you to all appointments, even when in uniform. This is necessary to verify the client's identity for our notary publics and to determine eligibility for legal assistance. Due to the nature of legal assistance appointments generally, and the will execution session specifically, our office is regrettably unable to accommodate small children. This prohibition also allows us to provide faster and more efficient service to all of our clients.

Your cooperation is important and allows us to provide you the best in legal assistance. Please let us know how we may better serve your needs.

WILL TERMINOLOGY

WHAT IS A WILL? A will is a legally effective declaration of a person's wishes as to the disposition of his/her property upon his/her death. It must be executed with the formalities required by statute. The provisions of a wills do not take effect until after the death of the maker. A will never disposes of the proceeds of insurance policies with named beneficiaries, nor does it dispose of some items of property which are held under various forms of special ownership, such as joint tenancy with a right of survivorship, or tenancy by entirety. In a will, you will designate an executor/trix, and if minor children are involved, a guardian (see definitions below). It is important that you contact the prospective executor/trix and guardian prior to the preparation and execution of the will to ensure that he/she/they is/are willing to accept the position.

WHO IS THE BENEFICIARY? Anyone to whom the maker of a will (testator/trix) leaves a portion of his/her property.

WHAT DOES BEQUEATH MEAN IN A WILL? To give personal property by will.

WHAT IS A BOND? Money put up by a guardian or executor to insure against loss occasioned by their negligence or theft.

WHAT IS DOMICILE? A person's permanent home. The place to which, whenever he/she is absent, he/she has the intention of returning. You can have more than one residence, but you can only have one domicile. Your intent, voting, paying taxes, registering automobiles, obtaining a driver's license, and location of assets are factors considered in determining domicile. For military members, your domicile is often your legal residence (e.g., your home of record), not the place you are currently living.

WHAT IS AN ESTATE? All property, real and personal, in which a person has an interest, such as money, savings accounts, stocks, house, furniture, insurance policies, etc.

WHAT DOES RESIDUARY ESTATE MEAN? Residuary is a derivative of the word “residue.” It means what is left over. Your residuary estate is the portion of your estate that is left over when everything else is disposed of.

WHAT DOES EXECUTION MEAN? To validate a will by correctly signing it and having it witnessed.

WHO IS THE EXECUTOR/TRIX? The person named in a will to carry out the wishes expressed in the will. An Executor is male; an Executrix is female. Upon the death of a maker of a will, the Executor/trix must take the will to the proper court for probate. Once the court accepts the will as valid, the court officially appoints the person as Executor/trix. An Executor/trix may be entitled to compensation for his/her services. Individuals serving in this capacity serve subject to court approval. While most courts follow the desires of the Testator/trix in his/her will, they are not bound to do so. A bond may be required of an Executor/trix. In some states the term “Personal Representative” means the same thing as Executor/trix.

WHO IS A GUARDIAN? One who is responsible for caring for the person and/or property of a minor child. Individuals serving in this capacity serve subject to court approval. While most courts follow the desires of the Testator/trix in his/her will, they are not bound to do so. Courts can require guardians to post a bond.

WHO IS THE TESTATOR/TRIX? You, the person making the will. A Testator is male; a Testatrix is female.

WHAT IS PERSONAL AND TANGIBLE PROPERTY? Property which is moveable.

WHAT IS A PROBATE? A court proceeding where the Executor/trix seeks to establish a will as genuine, settle all the debts of an estate, and distribute the property in the estate to the heirs according to the wishes of the will maker as expressed in the will.

WHAT IS A PROBATE ESTATE? The portion of an estate that requires court supervised administration to effect transfer of title. It does not include property transferred at the time of a person’s death by other means, such as property held as joint tenants with right of survivorship, or life insurance paid to a designated beneficiary. For tax purposes, all property which the decedent owned or in which he/she had an interest, may be included in the taxable estate, although some of it is not within the probate estate.

WHAT IS REAL PROPERTY? Property that has a fixed location, such as land or a house.

WILL QUESTIONNAIRE WORKSHEET

1.) PERSONAL INFORMATION:

- a.) Name (first, middle, last): _____
- b.) Social Security Number: _____
- c.) Are you a U.S. citizen? _____ yes _____ no
- d.) Is your spouse a U.S. citizen? _____ yes _____ no
- e.) State of legal residence: _____
- f.) Current address: _____

- g.) Home telephone: _____ Work telephone: _____

2.) MARITAL STATUS:

- _____ Married once, and my spouse is alive.
- _____ Presently married, and had a prior marriage (previous spouse is deceased or divorced).
- _____ Widow/ widower
- _____ Divorced, not presently married.
- _____ Single, never married.

NOTE: If both you and your spouse will be seeing the same attorney for your wills, you will both need to read and complete Appendix B.

3.) CHILDREN:

- a.) How many children do you have (including adopted & stepchildren)? _____
- b.) If you have adopted children or stepchildren, do you wish to treat them as natural children?
_____ yes _____ no
- c.) Is any child a minor? _____

4.) **VALUE OF ESTATE:**

To determine what type of will is appropriate for you, you need to provide a rough estimate of the value of your estate. For this purpose, include the value of all of the property you own in your name, and if married, the value of your spouse's property. If any of your property secures a debt (for example, a mortgage on your home), include your equity in the property. Also include the value of your life insurance policies (SGLI, VGLI, etc.). Note that life insurance ordinarily does **not** pass according to your will; it will go to the beneficiaries you designated on the insurance forms. However, the value of the insurance is typically included in determining whether estate taxes will apply in your case.

Approximate values of your estate (not including life insurance): \$ _____

Approximate value of your spouse's estate (not including life insurance): \$ _____

Value of life insurance (self and spouse): \$ _____

Total value of both your and your spouse's estate including life insurance: *\$ _____

*If the value of your estate is over \$675,000 (or \$1 million if you are married), please consult a civilian attorney about your will. Estates over this threshold will be subject to estate taxes and you will need estate planning advice to prepare your will properly. **NOTE:** If you need an emergency will generated by this office, you will need to read and complete Appendix A.

5.) **FAMILY FARM / FAMILY-OWNED BUSINESS:**

Do you have a farm or family-owned business? _____ yes _____ no

6.) **REAL ESTATE:**

a.) Do you own real estate? _____ yes _____ no

b.) If yes, how do you wish to give your real estate?

_____ All to my spouse.

_____ Different properties to different beneficiaries (below, please list each person, their relationship to you, and which piece of property they are to receive):

_____ To pass with the rest of my estate.

_____ My home to my spouse and the rest of my real estate to pass with the rest of my estate.

_____ My home to my spouse for as long as my spouse lives there and then my home and the rest of my real estate to pass with the rest of my estate.

7.) **PERSONAL EFFECTS AND TANGIBLE PERSONAL PROPERTY:**

How do you wish to give your personal property?

_____ All to my spouse.

_____ Specific items are to go to specific individuals, with all items not listed passing to my spouse. (Please attach detailed list of items, beneficiaries, and relationship to you.)

_____ Specific items are to go to specific individuals, with all items not listed passing with the rest of my estate. (Please attach detailed list of items, beneficiaries, and relationship to you.)

_____ To pass with the rest of my estate.

_____ Some other scenario not provided here (please explain): _____

8.) **SPECIFIC BEQUESTS:**

You may elect to make specific gifts of cash, real estate, or personal property to specific people or charities in you will. However, these bequests will be distributed first and may deplete your estate. Also, specific bequests may complicate the probate of your estate if the property given cannot be found at your death. Therefore, if you make any specific bequests, you should only give property or amounts of cash that you are reasonably sure you will possess at the time of your death. If you make no specific bequests, all of your property will pass to your primary beneficiaries.

Note that you may leave a separate writing with your will, typically called a “letter of instruction,” in which you give specific directions to your Executor/trix about funeral and burial arrangements, notifications to family and friends, upbringing of your children, etc. While this instruction is not legally binding in most states, your Executor should try to comply with your desires.

Many states also allow you to make a “personal memorandum,” in which you can give specific items of personal property to named beneficiaries in a separate writing. While in most states memorandum gifts are not legally binding, your executor will give these gifts as much weight as state law allows.

a.) Do you wish to make any specific bequest in your will? _____ yes _____ no

b.) If yes, please list your specific bequest(s): _____

9.) **RESIDUARY ESTATE:**

The residuary estate is whatever property remains in your estate after debts and expenses of administration have been paid, and any specific bequests have been paid. Because many people do not make specific bequests, "residuary estate" usually describes all the property that you will leave to your beneficiaries.

a.) To whom do you want to leave your residuary estate?

_____ All to my spouse if he/she survives me, and if not, then to my children and issue.

_____ A minimum bequest to my spouse, disinheriting him/her to the fullest extent of the law, with the remainder going to some other person(s).

_____ All to one specific beneficiary other than my spouse.

_____ To more than one beneficiary.

b.) If you have more than one beneficiary, are they:

_____ Specific people who are to share equally.

_____ A group of people described as a class (e.g., "my brothers and sisters") who are to share equally.

_____ Some other unequal division between the beneficiaries (e.g., 50% to one beneficiary and 25% each to two others).

_____ Some other arrangement (please explain): _____

c.) If any of your beneficiaries is a minor, at what age do you want them to receive their gift?

_____ 18

_____ 21

_____ Some other age (please indicate the age): _____ (NOTE: Selecting an age greater than 21 will likely require the creation of a trust, which will cause your estate to incur additional expenses for the administration of the trust. These expenses would therefore diminish the amount available for your beneficiaries.)

10.) **EXECUTOR:**

The executor (or in some states, “personal representative”) is the person who makes sure your estate is settled upon your death. This ordinarily involves going through probate, which is a court-administered procedure for settling an estate. Probate involves petitioning a court for letters of appointment, settling creditor claims, finding and distributing assets, and filing any necessary tax returns. Any adult may serve as your executor, although many states have a preference for or require an executor who is a legal resident of the state where probate is conducted. Therefore, if possible, you should select family members or responsible friends who are residents of the same state you claim as your legal residence or the state where you own real estate.

Whom do you wish to have as your executor?

_____ My spouse.

_____ My spouse and a co-executor.*

_____ My spouse and a successor executor.**

_____ One executor other than my spouse.

_____ Two co-executors, neither of whom are my spouse.*

_____ One executor and a successor executor, neither of whom are my spouse.**

*This option is not usually recommended because conflicts can arise between the executors that will complicate the administration of your estate.

**The successor will act only if your first choice is unable to act as your executor.

11.) **GUARDIAN:**

If your children are minors at the time of your death and if the other natural parent of the children is not alive or for any reason cannot act as guardian, the court will normally appoint the person(s) you name below to act as legal guardian(s) of the children. The individual(s) named below will have physical control and custody of the children until they reach age 18. If you are divorced, keep in mind the court will ordinarily appoint your former spouse to be the guardian (as the children's other natural parent), notwithstanding your direction here. You should still select a guardian, however, in case your former spouse predeceases you or for any reason cannot act as the children's guardian.

Do you wish to appoint:

_____ One guardian for any child when I die.

_____ One guardian and a successor guardian.

_____ Two co-guardians

_____ No guardian is to be appointed under this will.

If you wish to appoint a guardian or guardians, whom do you wish to have named? (Please list name and relationship):

1st choice: _____

2nd choice (optional): _____

3rd choice (optional): _____

12.) **TRUSTS (OPTIONAL):**

Instead of giving your estate directly to a beneficiary, you may elect to give your estate to a person designated as a trustee, to hold IN TRUST, for the benefit of your beneficiary/ies until he/she/they reach(es) the age you designate. The trustee will manage the trust under court supervision. Although the trustee's primary purpose is to safeguard the inheritance, the money can also be used for any beneficiary's health, education, welfare, or maintenance, at the trustee's discretion. Also, you may create a trust that "pools" your estate. Through pooling, your estate and insurance proceeds remain in a single trust until **all** the beneficiaries reach the age you choose. The trustee may provide funds from the trust to each beneficiary as each has a need. Thus, not all beneficiaries will receive equal amounts from the trust. Such an arrangement is useful where some beneficiaries will likely need more financial assistance over a longer period of time than other beneficiaries will. A trust is also advantageous where there is a need to protect the assets of your estate from third parties who may have claims to the assets of one of your beneficiaries.

For many people, a trust is unnecessary because, under the Uniform Gifts to Minors Act (UGMA) language that we include in your will, gifts to beneficiaries under the age of 18 (or, if you prefer, under the age of 21) will be controlled by your executor/trix initially, and guardian after probate, without establishing a trust. The executor/trix and/or guardian can still use the child's inheritance for the benefit of the child, and this arrangement is ordinarily less complicated and less expensive than establishing a trust. Therefore, unless you have children from a prior marriage, handicapped children, or a very large estate, a trust is generally not necessary to manage a child's inheritance.

One disadvantage, however, to the UGMA is it does not allow "pooling" of your estate. Put simply, under the UGMA your estate will be divided in as many equal shares as there are minor beneficiaries designated; each beneficiary will receive the remainder of his or her share as they turn 18 or 21, at your option. In a nutshell, a trust may be more appropriate if you want the trustee/guardian authority to spend more money on one child than another (e.g., a disabled child).

a.) Do you want a trust? _____ yes _____ no (If "no," skip to Item 13.)

If yes, would this be:

_____ one trust for the benefit of all beneficiaries.

_____ individual trusts for each of the beneficiaries.

b.) At what age would you like the trust(s) to terminate?
_____ 18 _____ 21 _____ other (please designate the age): _____

c.) Whom do you wish to have named as Trustee? (Please list name and relationship):

1st choice: _____

2nd choice (optional): _____

3rd choice (optional): _____

d.) Do you want the trustee to have the power to dissolve the trust if it becomes uneconomical to maintain it? _____ yes _____ no

e.) Do you want the trustee to exercise this power only if the trust is below a specific amount?
_____ yes _____ no

If so, what amount? \$ _____

13.) **DISINHERITING SOMEONE:**

a.) Do you wish to disinherit someone other than your spouse? _____ yes _____ no

If so, whom (please provide the name and relationship to you.)? _____

b.) Do you wish to disinherit anyone who contests your will? _____ yes _____ no

c.) If you wish to disinherit your spouse, do you want your executor to have the authority to distribute your property, outright or in trust, to minimize any right of election your spouse might have under the laws of any jurisdiction? _____ yes _____ no

14.) **DISTRIBUTION OF ESTATE TO CHILDREN:**

a.) With regard to minors who may inherit under your will, do you want their gifts to be:

_____ Paid at the election of the executor (the executor may pay the child some or all of the gift, at various times, as the executor sees fit, even though the child is a minor).

_____ Held in trust until the child is no longer a minor.

b.) Hypothetically speaking, if you were to have stepchildren or adopted children, would you want to:

_____ Expressly include them in your will (treat them the same as natural children).

_____ Expressly exclude them from your will.

_____ Have the will remain silent as to stepchildren and adopted children.

c.) Is any child of yours in fact a stepchild or adopted child? _____ yes _____ no

15.) **FAMILY MEMBERS:**

a.) What is your spouse's name: _____

Please list your children's names, ages, and whether they are your biological, adopted, or stepchildren:

16.) **MILITARY STATUS:**

I am: _____ Active duty military.
_____ Retired from the military.
_____ Married to someone on active duty.
_____ Married to a military retiree.
_____ A dependent of someone on active duty
_____ A dependent of a military retiree
_____ Other (please specify): _____

If you are on active duty or are the spouse or dependent of an active duty military member, where are you, your spouse, or your sponsor stationed?

17.) **CHOICE OF EXECUTOR:**

If your primary beneficiary could qualify as your executor, you should consider appointing him or her as your first choice. This is more convenient and will avoid putting a third party between your beneficiary and the gift. In some states (such as Virginia), it is necessary that your executor (or if you indicated you wanted co-executors in Item 10 above, then one of your co-executors) be a resident of the state where your will is going to be probated. If you indicated earlier that you wanted co-executors, please indicate so again below.

Whom do you wish to have named as your executor? (Please list name and relationship):

1st choice: _____

2nd choice (optional): _____

3rd choice (optional): _____

18.) **PRIMARY BENEFICIARIES:**

a.) Whom do you want to receive all (or the majority) of your estate?

_____ My spouse, if he/she survives me, and if not, then my children.

_____ Disinherit spouse (to the fullest extent permitted by law).

_____ My children.

_____ My parents in equal shares, or if not, then my siblings in equal shares (please provide names and relationships):

_____ To the following beneficiaries (list name, relationship, and percentage of estate to each of the beneficiaries):

b.) If any of the above beneficiaries predecease you and leave descendants (issue), do you want the share of the deceased beneficiary to pass to their issue, or to pass only to the beneficiaries you have indicated above? (For example, if one of your child predeceases you and leaves children, do you want the share of your deceased child to pass to their children (your grandchildren) or to go only to your surviving children?)

_____ To the children of any deceased beneficiary.

_____ Only to the beneficiaries listed above.

19.) **SECONDARY BENEFICIARIES:**

If all of the primary beneficiaries you designated in Item 18 predecease you or die within 30 days of you, to whom do you wish to leave your estate (please provide name, relationship, and percentage of inheritance or list of which item(s) are to go to which individuals)?

20.) **LIVING WILLS:**

A living will is not part of your will at all! But this is a good time to consider whether you want a living will, which is more accurately called an advance medical directive or declaration. This document states that in the event you have a terminal, incurable medical condition and your life is only being prolonged by means of artificially provided life support, and if you cannot communicate your desires at that point, the living will “speaks for you” so your doctors know and can act upon, your desires regarding the termination of life support.

The conditions that trigger the living will, and the extent of the medical care to be withdrawn, vary from state to state. Therefore, you should carefully review the language of the living will for the state you have chosen and decide if it truly reflects your choice for discontinuing life support. Once executed, the document is effective until it is revoked, which you may do at any time by physically destroying the document, or in an emergency, by verbally revoking it before witnesses who can testify that you did in fact revoke it.

Do you want a living will? _____ yes _____ no

21.) **SPECIAL POWER OF ATTORNEY FOR MEDICAL CARE:**

Another important health care document is the special power of attorney for medical care. You may execute this document in addition to, or in lieu of the living will.

This document appoints someone to make medical care decisions for you in the event that you cannot make your own medical decisions. It applies to more situations than the living will, which addresses only the issue of continued life support if you have a terminal condition. The power of attorney for medical care gives the person you designate as your agent the authority to make a wide range of medical decisions on your behalf. It also gives your agent access to your medical information and authority to fully participate with your treating physicians in deciding the care to be provided to you. Obviously, the person you designate to be your agent should be someone you trust with life and death decisions. Like the living will, the power of attorney is usually drafted in accordance with the laws of the state where you are residing.

a.) Do you want a Medical Power of Attorney? _____ yes _____ no

b.) Do you want your spouse to act as your agent? _____ yes _____ no

Unless you have selected your spouse to act as your agent **and** your spouse has the same address you do, please provide the name, address, phone number, and relationship of your first choice of agent:

c.) If you have a second choice, do you want

_____ both agents to have the authority to act separately.

_____ to require both agents to act jointly unless one is incapacitated.

_____ the second agent to be as a successor, acting only if the first choice is incapacitated.

Please provide the name, address, phone number, and relationship of your second choice of agent:

d.) Do you wish to specify that you desire to donate your body organs for transplant upon death? _____ yes _____ no

If yes, are you also willing to donate organs and tissue for medical, educational, or scientific purposes? _____ yes _____ no

e.) Do you wish to specify that, if possible and if it does not place an undue burden upon your family, that you prefer to die at home rather than in a hospital? _____ yes _____ no

If you currently live in a state other than the one in which you are a legal resident, you may want your living will to be drafted in accordance with the laws of the state where you actually live and not your state of legal residence, because it is more likely to be used where you currently live.

f.) Do you wish to have the living will governed by the laws of the state where you currently live? _____ yes _____ no We will ask you more about this below.

22.) **SPRINGING DURABLE GENERAL POWER OF ATTORNEY:**

Your will enables you to dispose of your property as you wish after your death. While you are living, you have the right to decide what happens to that property so long as you are of sound mind. But if you ever become incapacitated, whether through illness or accident, and are unable to handle your own affairs, a court order may revoke your right to manage your own money and appoint a guardian or conservator. To protect yourself from this eventuality, you can appoint an agent for yourself through a power of attorney.

A power of attorney is simply a written authorization for someone to act on your behalf, for whatever purpose you designate in writing. Ordinarily, a power of attorney expires if you become mentally disabled – the time when you need help the most. A **springing, durable** power of attorney can take effect when you **become** unable to manage your own personal and financial affairs and will last as long as you are alive or until you revoke it. As long as you are mentally competent, you can revoke a durable power of attorney whenever you like simply by destroying the document.

If you choose to have a springing durable general power of attorney, remember to name someone who you trust as your attorney-in-fact. Your attorney-in-fact will have great authority over your affairs. Not only can they keep your affairs in order, but they have the potential to abuse this document at your expense and his or her gain.

a.) Would you like a springing durable general power of attorney? _____ yes _____ no

b.) Do you want your spouse to act as your agent? _____ yes _____ no

Unless you have selected your spouse to act as your agent **and** your spouse has the same address you do, please provide the name, address and relationship of your first choice of agent:

c.) If you have a second choice, do you want:

_____ both agents to have the authority to act separately.

_____ to require both agents to act jointly unless one is incapacitated.

_____ the second agent to be as a successor, acting only if the first choice is incapacitated.

Please provide the name, address, and relationship of your second choice of agent:

d.) If you selected your spouse to act as your agent, at what telephone number can her or she be reached?

23.) **FUNERAL ARRANGEMENTS:**

You may have a strong desire regarding funeral arrangement (for example, burial or cremation). As a practical matter, your funeral arrangements are likely to have been carried out already by the time your will is read. Finding out after the fact that the arrangements were contrary to your will may cause some dismay for your survivors. Therefore, it is recommended that you communicate your desires to your next of kin at your earliest opportunity. If you wish, however, your preference may also be recorded in the will.

You may express your desires regarding the disposition of your remains (e.g. cremation, military honors, or burial at a certain location or gravesite). However, if you elect to state your desires in your will, do not rely on your will alone to communicate those desires, as wills may not be read prior to the funeral! You should tell the appropriate family members of your desires NOW!

_____ I do not wish to express my desires concerning my remains in my will and leave this decision to those who survive me. (Go to Item 24.)

At the time of death, I prefer:

_____ To be cremated.

_____ To have my body given for medical or scientific purposes.

_____ To be buried at a specified gravesite or location. (Please specify location): _____

_____ To be buried at sea.

_____ To be buried with full military honors. (You may select this option in addition to one of the above.)

_____ Other: _____

24.) **ONE MORE QUESTION:**

The living will is ordinarily drafted in accordance with the laws of the state where you are currently living, because the laws of the state where you are hospitalized control the effectiveness of the living will.

Which state's laws do you want to govern your living will? _____

REMINDERS:

If the value of your estate is over \$675,000 (or \$1 million if you are married), and you would still like a will generated by this office, please read and complete Appendix A.

If both you and your spouse will be seeing the same attorney for your wills, please read and complete Appendix B.

PRIVACY ACT STATEMENT

AUTHORITY: 10 USC 8013, F110 AFJAA, and EO 9397

PURPOSE: Used by attorney and client within attorney-client relationship to assist in providing a will and other related legal documents.

ROUTINE USES: Information will be used to aid attorneys and paralegals in drafting wills, living wills, and durable health care powers of attorney. Disclosure is voluntary, but if you do not provide the requested information, this office will be unable to prepare a will or other related documents for you.

APPENDIX A – Waiver of Liability

Dear Client:

Because of the value of your estate, and the concomitant adverse tax consequences associated with such an estate, it is the recommendation of this office that you see an estate planner to assist you in drafting your will. The costs associated with seeing a civilian attorney qualified to construct a will specifically tailored to your particular situation are far outweighed by the savings such a will can garner for you. Despite this recommendation, and with full awareness of the adverse tax consequences of doing so, you have requested a will drafted by this office, even though such a will does not have any tax avoidance features.

Very respectfully,

ATTORNEY NAME
Legal Assistance Attorney

I (we), (please print your name(s)) _____
(and _____) have read the foregoing letter,
understand the same, and still desire to have a will prepared by (please print attorney's name)
_____, of the Joint Services Pentagon
Legal Assistance Office. I fully understand that this will does not take into account the effect of
tax consequences on my estate or utilize any estate planning devices to minimize my estate's tax
liability.

APPROVED THE _____ day of _____, 2000

Client

Client

APPENDIX B – Dual Representation Authorization

Dear Clients:

You and your spouse have indicated that you both wish to meet together with the same attorney to discuss your will and ancillary documents. Due to the potential for conflicts of interest, it is the policy of this office to raise this issue with you and require your informed consent to proceed. Therefore, your signature below will confirm the following:

(1) You have requested that the same legal assistance attorney represent each of you and advise you both on certain estate planning matters.

(2) It is contemplated that the matters to which this representation will extend will include the following:

- Analysis of the assets owned by each of you at the time of your marriage, including consideration of the fair market value of such property and the nature in which title was then held;
- Analysis of all property now owned by each of you, including consideration of its fair market value, the manner in which title to such property is now held, and a categorization of such property as separate, community, or quasi-community property;
- Discussions about the manner in which you wish to dispose of any property over which you may have any power of disposition at the time of your death; and
- Preparation of the documents necessary to accomplish the desired disposition, including the drafting of wills, trusts, property agreements, and other documents as may be required.

(3) You are aware that, during the course of the estate planning work, disagreements may arise between you and your spouse with respect to the ownership of your property (separate, community, or quasi-community property) and its desired disposition during your lifetimes and at your deaths. Differences of opinion on the disposition of the property, under ethical rules, do not prevent the same attorney from continuing to represent both of you. However, during the course of the estate planning, conflicts of interest between you and your spouse may also arise, such as issues regarding the ownership of certain property.

(4) Ordinarily, under such circumstances, one attorney cannot represent both of you. It may be better for each of you, under such circumstances, to have separate, independent counsel to avoid the possibility that my advice to one of you is influenced by my representation of the other. Nevertheless, you have requested, with a full understanding of your right to, and the advantages of, independent counsel, that you both be represented by the same legal assistance attorney in all of the above matters.

(5) Although they rarely occur, if a conflict of interest does arise between the two of you of such a nature that I believe it impossible, in my judgment, for me to perform any obligations to either of you in accordance with this letter, I will withdraw from all further representation of either of you in this matter at that time and advise both of you to obtain independent counsel.

(6) You have each agreed that there will be complete and free disclosure and exchange of all information I receive from either or both of you in the course of my representation of you, and that such information shall not be confidential between you irrespective of whether I obtain such information in conferences with both of you or in private conferences with only one of you, including any conferences that may have taken place before the date of this letter.

Very respectfully,

ATTORNEY NAME,
Legal Assistance Attorney,

We, (please print your names) _____
and _____, have read the foregoing
letter, understand the same, consent to the disclosure and exchange of all information received
by _____, our legal assistance
attorney from either one of us, with the other one of us, and consent to our legal assistance
attorney representing each and both of us in the aforementioned estate planning services.

APPROVED THE _____ day of _____, 2000

Client

Client

Dear Legal Assistance Clients:

To help us serve you better, please take a few minutes to complete this Client Satisfaction Survey. All of the questions may not apply, but please answer the ones that do. Your honest and constructive responses will help us provide quality legal services to our clients. Please mark the appropriate blocks and deposit the survey in our suggestion box located in the waiting room or ask the receptionist for help.

Thank you for your assistance.

Sincerely,

ATTORNEY NAME
Legal Assistance Attorney

Name and phone number (optional) _____

1. Date of your visit: _____

2. Reason for your visit: _____

3. Attorney seen: _____

3. Your branch of service: ____ Army ____ Navy ____ Air Force ____ Marines ____ Coast Guard

4. Your grade: _____ 5. Where are you stationed? _____

6. How did you hear about our service? _____

7. Were you referred to us by another Legal Assistance Office? ____ yes ____ no
If yes, please tell us why. _____

8. The length of time it took to get an appointment was: ____ walk-in ____ within 3 days
____ within 10 days ____ over 10 days

Comments: _____

9. How were you treated by the receptionist? ____ Great ____ Good ____ Fair ____ Poor

Comments: _____

10. How were you treated by the legal technician? ____ Great ____ Good ____ Fair
____ Poor

Comments: _____

11. How were you treated by the Notary? ____ Great ____ Good ____ Fair
____ Poor

Comments: _____

12. How clear was your attorney's advice to you? ____ Great ____ Good ____ Fair
____ Poor

Comments: _____

13. How well did the attorney answer your questions? ____ Great ____ Good ____ Fair
____ Poor

Comments: _____

14. How did your attorney treat you? ____ Great ____ Good ____ Fair ____ Poor

Comments: _____

15. If the attorney prepared documents for you, how long did you have to wait? ____ less than 3 days
____ less than 10 days ____ more than 10 days

Comments: _____

16. How would you rate our services overall? ____ Great ____ Good ____ Fair ____ Poor

Comments: _____

17. What can we do to serve you better? _____

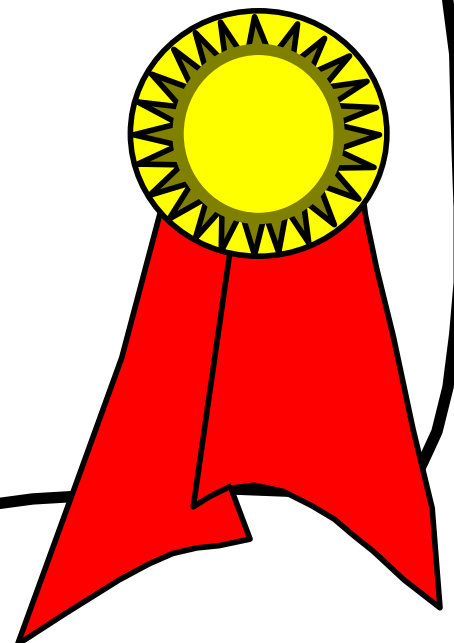
**JOINT SERVICES
PENTAGON LEGAL
ASSISTANCE OFFICE**

**COMPLEX ESTATE
PLANNING WORKSHEET**

CLIENT'S NAME: _____

DATE AND TIME OF APPOINTMENT: _____

**PENTAGON
ROOM 1D738
(703) 693-0107**



ESTATE PLANNING FINANCIAL QUESTIONNAIRE

PERSONAL INFORMATION

Name of husband: _____

Are you a U.S. Citizen or U.S. National? _____ yes _____ no

Name of wife: _____

Are you a U.S. Citizen or U.S. National? _____ yes _____ no

Current address: _____

Phone #s: (home): _____ (husband's office): _____ (wife's office): _____

E-mail: (husband's): _____ (wife's): _____

City and state of domicile (planned permanent residence): _____

Name your children, indicate whether they are natural children, adopted, or stepchildren, and provide their dates of birth:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

EXECUTOR: This is the person who presents your will to the court for probate, ensures that your wishes are carried out, and that your estate is settled upon your death. Whom do you wish to have serve as your executor (generally spouses can name each other as their primary executor)?

Husband:

Primary: _____

Wife:

Primary: _____

Alternate: _____

Alternate: _____

TRUSTEE: This is the person who supervises the management of any trusts created by your will. Whom do you wish to have serve as your trustee? (Spouses can name each other as their primary trustee.)

Husband:

Primary: _____

Wife:

Primary: _____

Alternate: _____

Alternate: _____

GUARDIAN: This is the person whom you would wish to raise your children should both you and your spouse die while the children are still minors; both of you should agree upon the choice(s). If you have minor children, whom do you wish to have serve as their guardian?

Primary: _____

Alternate: _____

FINANCIAL QUESTIONS

Please detail any special circumstances or general estate planning concerns about which you may have questions.

1. Asset Valuation Summary:

To accurately determine the estate and gift tax consequences, if any, resulting from the distribution of your property, please provide the information requested below. You need only provide approximate figures. If you prefer, you can provide us with a recent financial statement that accurately reflects the current value of your joint and individual assets and liabilities.

	Joint	Husband	Wife	Total
Checking accounts				
Savings accounts				
Residence(s) equity				
Other real estate equity				
Investments (excluding retire- ment benefits)				
Closely-held business(es)				
Life insurance death benefits				
Vehicles				
Other personal property (e.g., furniture, jewelry, etc.)				
Other assets (list)				
Other assets (list)				
Other assets (list)				
Total				

Have you ever filed an IRS Form 709 "U.S. Gift (and Generation-Skipping Transfer) Tax Return?"

_____ yes _____ no

2. **Residence Information.**

A. **Primary Residence:** (address): _____

Estimated Value	Amount of Mortgages	Equity	Monthly Mortgage Payment	Owned By (husband, wife, jointly)

(So that we can properly plan for its disposition, please provide us a copy of the deed and mortgages for this primary residence.)

Original Purchase Price: \$ _____ Cost of Additional Improvements: \$ _____

How long do you plan on retaining this as a primary residence? What are your plans for this property?

B. **Secondary Residence:** (address): _____

Estimated Value	Amount of Mortgages	Equity	Monthly Mortgage Payment	Owned By (husband, wife, jointly)

(So we can properly plan for its disposition, please provide us a copy of the deed and mortgages for this secondary residence.)

Original Purchase Price: \$ _____ Cost of Additional Improvements: \$ _____

How long do you plan on retaining this as a primary residence? What are your plans for this property?

Do you rent out this secondary residence? _____

3. **Other Real Estate Information (other than residences).**

A. **Other jointly owned real estate (i.e., in both husband's and wife's names).**

Location	Estimated Value	Amount of Deeds of Trust	Equity	Other Co- Owners?
Total				

B. **Other real estate owned by husband only.**

Location	Estimated Value	Amount of Deeds of Trust	Equity	Other Co- Owners?
Total				

C. **Other real estate owned by wife only.**

Location	Estimated Value	Amount of Deeds of Trust	Equity	Other Co- Owners?
Total				

4. **Investment Account Information (other than retirement accounts).**

A. **Jointly owned investment accounts, mutual funds, etc. (i.e., in both husband's and wife's names).**

Location	Estimated Value	Amount of Margin Loans	Net Value	Other Co-Owners?
Total				

B. **Investment accounts owned by husband only.**

Location	Estimated Value	Amount of Margin Loans	Net Value	Other Co-Owners?
Total				

C. **Investment accounts owned by wife only.**

Location	Estimated Value	Amount of Margin Loans	Net Value	Other Co-Owners?
Total				

5. Retirement Benefits.

A. Husband's retirement benefits.

Description	Current Value	Beneficiary
Total		

B. Wife's retirement benefits.

Description	Current Value	Beneficiary
Total		

C. Please provide below any other information regarding retirement accounts and other deferred compensation arrangements:

6. Liability Information.

A. Joint liabilities (i.e., those liabilities for which both husband and wife are responsible), other than those listed previously.

Creditor	Liability Amount	Payment Amount	Payment Frequency	Secured?
Total				

B. Husband's liabilities, other than those listed previously.

Creditor	Liability Amount	Payment Amount	Payment Frequency	Secured?
Total				

C. Wife's liabilities, other than those listed previously.

Creditor	Liability Amount	Payment Amount	Payment Frequency	Secured?
Total				

7. Life Insurance Information.

A. Joint life insurance policies (i.e., life insurance insuring both husband's life and wife's life). (Please indicate those policies not owned by husband or wife with "".)**

Company	Type	Face Amount (Death Benefit)	Cash Surrender Value	Beneficiary
Total				

B. Husband's life insurance policies; i.e., life insurance insuring husband's life. (Please indicate those policies not owned by husband with "".)**

Company	Type	Face Amount (Death Benefit)	Cash Surrender Value	Beneficiary
Total				

C. Wife's life insurance policies (i.e., life insurance insuring wife's life). (Please indicate those policies not owned by wife with "".)**

Company	Type	Face Amount (Death Benefit)	Cash Surrender Value	Beneficiary
Total				

[illegible][illegible]

9. Living Will:

A living will is not part of your will at all! But this is a good time to consider whether you want a living will, which is more accurately called an advance medical directive or declaration. This document states that in the event you have a terminal, incurable medical condition and your life is only being prolonged by means of artificially provided life support, and if you cannot communicate your desires at that point, the living will “speaks for you” so your doctors know and can act upon, your desires regarding the termination of life support.

The conditions that trigger the living will, and the extent of the medical care to be withdrawn, vary from state to state. Therefore, you should carefully review the language of the living will for the state you have chosen and decide if it truly reflects your choice for discontinuing life support. Once executed, the document is effective until it is revoked, which you may do at any time by physically destroying the document, or in an emergency, by verbally revoking it before witnesses who can testify that you did in fact revoke it.

Do you want a living will? _____ yes _____ no

10. Special Power Of Attorney For Medical Care:

Another important health care document is the special power of attorney for medical care (SPOAMC). You may execute this document in addition to, or in lieu of the living will. This document appoints someone to make medical care decisions for you in the event you cannot make your own medical decisions. It applies to more situations than the living will, which addresses only the issue of continued life support if you have a terminal condition. The SPOAMC gives the person you designate as your agent the authority to make a wide range of medical decisions on your behalf. It also gives your agent access to your medical information and authority to fully participate with your treating physicians in deciding the care to be provided to you. Obviously, the person you designate to be your agent should be someone you trust with life and death decisions. Like the living will, the power of attorney is usually drafted in accordance with the laws of the state where you are residing.

a.) Do you want a Medical Power of Attorney? _____ yes _____ no

b.) Do you want your spouse to act as your agent? _____ yes _____ no

Unless you have selected your spouse to act as your agent **and** your spouse has the same address you do, please list the name, address, phone number, and relationship of your first choice of agent:

c.) If you have a second choice, do you want

_____ both agents to have the authority to act separately.

_____ to require both agents to act jointly unless one is incapacitated.

_____ the second agent to be as a successor, acting only if the first choice is incapacitated.

Please provide the name, address, phone number, and relationship of your second choice of agent:

d.) Do you wish to specify that you desire to donate your body organs for transplant upon death?

_____ yes _____ no

If yes, are you also willing to donate organs and tissue for medical, educational, or scientific purposes?

_____ yes _____ no

e.) Do you wish to specify that, if possible and if it does not place an undue burden upon your family, that you prefer to die at home rather than in a hospital? _____ yes _____ no

If you currently live in a state other than the one in which you are a legal resident, you may want your living will to be drafted in accordance with the laws of the state where you actually live and not your state of legal residence, because it is more likely to be used where you currently live.

f.) Do you wish to have the living will governed by the laws of the state where you currently live?

_____ yes _____ no

We will ask you more about this below.

11. **Springing Durable General Power Of Attorney:**

Your will enables you to dispose of your property as you wish after your death. While you are living, you have the right to decide what happens to that property so long as you are of sound mind. But if you ever become incapacitated, whether through illness or accident, and are unable to handle your own affairs, a court order may revoke your right to manage your own money and appoint a guardian or conservator. To protect yourself from this eventuality, you can appoint an agent for yourself through a power of attorney.

A power of attorney is simply a written authorization for someone to act on your behalf, for whatever purpose you designate in writing. Ordinarily, a power of attorney expires if you become mentally disabled – the time when you need help the most. A **springing, durable** power of attorney can take effect when you **become** unable to manage your own personal and financial affairs and will last as long as you are alive or until you revoke it. As long as you are mentally competent, you can revoke a durable power of attorney whenever you like simply by destroying the document.

If you choose to have a springing durable general power of attorney, remember to name someone who you trust as your attorney-in-fact. Your attorney-in-fact will have great authority over your affairs. Not only can they keep your affairs in order, but they have the potential to abuse this document at your expense and his or her gain.

a.) Would you like a springing durable general power of attorney? _____ yes _____ no

b.) Do you want your spouse to act as your agent? _____ yes _____ no

Unless you have selected your spouse to act as your agent **and** your spouse has the same address you do, please provide the name, address, telephone number and relationship of your first choice of agent:

c.) If you have a second choice, do you want:

- _____ both agents to have the authority to act separately.
- _____ to require both agents to act jointly unless one is incapacitated.
- _____ the second agent to be as a successor, acting only if the first choice is incapacitated.

Please provide the name, address, telephone number, and relationship of your second choice of agent:

e.) If you selected your spouse to act as your agent, at what telephone number can her or she be reached?

ONE MORE QUESTION:

The living will is ordinarily drafted in accordance with the laws of the state where you are currently living, because the laws of the state where you are hospitalized control the effectiveness of the living will.

Which state's laws do you want to govern your living will? _____

PRIVACY ACT STATEMENT

AUTHORITY: 10 USC 8013, F110 AFJAA, and EO 9397

PURPOSE: Used by attorney and client within attorney-client relationship to assist in providing a will and other related legal documents.

ROUTINE USES: Information will be used to aid attorneys and paralegals in drafting wins, living wills, and durable health care powers of attorney. Disclosure is voluntary, but if you do not provide the requested information, this office will be unable to prepare a will or other related documents for you.

APPENDIX D

ESTATE OWNER'S BENEFICIARY OBJECTIVES

I. ESTATE OWNERS OBJECTIVES.

The estate owner's objectives are the most important step in the estate planning process. To formulate a sound estate plan, the plan must be constructed on the foundation of the owner's objectives.

II. BENEFICIARY OBJECTIVES:

- A. Planning for the spouse: In planning for his or her spouse, the estate owner must decide how much of the estate is to be left to the spouse and the manner in which it should pass to such spouse. The following questions will help the estate owner make these decisions:
 - 1. What portion of the estate should go to the spouse in preference to other beneficiaries? If the estate owner has difficulty arriving at a conclusion, the following subsidiary questions will be helpful.
 - a. What are the financial needs of the spouse compared to the needs of other beneficiaries?
 - b. What is the degree of love and affection for the spouse?
 - c. What are the feelings of the estate owner regarding the possibility of the spouse remarrying?
 - d. What is the likelihood the spouse will care for the children and other relatives out of the share left to such spouse?
 - 2. Of the portion or the estate going to the spouse, should it, apart from any tax considerations, go outright or in trust? Subsidiary factors to consider are:
 - a. What is the financial ability and experience of the spouse?

- b. Would the spouse consider outright ownership to be a burden?
 - c. Does the estate owner want to control the eventual disposition of the principal not used by the spouse during such spouse's lifetime?
- 3. If there is the a trust for the spouse, then
 - a. Who is to be the trustee?
 - b. Should the spouse receive all the income currently or should income distributions be discretionary with the trustee?
 - c. Should principal be available to the spouse?
 - d. If principal is to be available for the spouse, but the spouse is not to be the trustee, should the amount of the distributions be in the sole control of the trustee or should the spouse have an independent power of withdrawal, perhaps to a specified maximum?
 - e. Should the trust continue on the same terms for the spouse in the event of such spouse's remarriage?
 - f. On the surviving spouse's death, is the balance of the trust to go to named beneficiaries or to the surviving spouse's appointees?
- 4. Should gifts of life insurance or other assets be made to the spouse during the estate owner's' lifetime or should the entire estate pass only after the owner's death?

B. Planning for the Children: The estate owner must consider questions such as the following, to formulate planning objectives with regard to children:

1. What are the financial needs of the children?
2. What portion of the estate should go to the children in preference to other beneficiaries?
3. Of the portion of the estate going to the children, should an equal share go to each child or do any of the children have special needs?
4. Should the children receive at least some benefit from the estate while the surviving spouse is still living or should they wait until both parents die?
5. Should the children's shares be placed in trust or distributed outright?
6. If there is to be a trust for the children, then
 - a. Who is to be the trustee?
 - b. Should the children receive the income currently or should income distributions be discretionary with the trustee?
 - c. At what ages should principal be distributed to the children?
7. If a child does not survive until the age of distribution, who is to receive his or her share- the child's children, the child's spouse, the estate owner's other children, or other beneficiaries?
8. If any of the children are minors, who should be nominated as the guardian of the children?

9. Should gifts be made to the children during the owner's lifetime or should the estate pass to them only on the owner's death?

C. **Other Individual Beneficiaries:** Other individuals whom the estate owner may wish to provide for may be his or her grandchildren, parents, brothers, sisters, and sons- and daughters-in-law. Also, he or she may wish to include more distant relatives such as nieces, nephews, and cousins or a good friend or loyal employee. The following are a few questions which will stimulate the estate owner's thinking in this regard:

1. Should a portion of the estate be left directly to the grandchildren even if the children survive the estate owner?
2. Are there any needs that the estate owner is supporting during his or her lifetime that will need funds after his death?
3. Are there any persons whom the estate owner wishes to "remember" in the estate plan, even in a token way, to repay a kindness or perhaps to spare a person from feeling slighted if left out?
4. To whom does the estate owner wish to leave the estate, if his or her primary beneficiaries, such as his or her spouse and issue, do not survive the owner?

D. **Charitable Beneficiaries:** A few questions should be considered to ascertain the owner's real objectives in this regard:

1. Should a portion of the estate be left on the estate owner's death to charity in preference to other beneficiaries?
2. If a part of the estate is to be left to charity, to which charities should it be left?
3. Should the charitable bequests be outright or restricted to specific purposes?
4. Should a charity be designated as a contingent beneficiary in the event the primary beneficiaries do not survive?

5. Should charitable gifts be made during the owner's lifetime?

E. Retirement Objectives: Consider objectives regarding retirement to help plan for that period of the owner's life. The following questions are useful in this regard:

1. Does the estate owner have a strong desire to retire?

2. What is his or her anticipated lifestyle during retirement?

3. How much annual income will be needed during retirement?

4. At what age would he or she like to retire?

5. To what extent is the estate owner willing to save now, to create an adequate estate for retirement, either voluntary or forced by age or disability?

APPENDIX E

EXTRACT OF AR 27-3

Current AR 27-3, para 3-6b provision:

(b) *Estates.* Legal assistance will be provided on wills, testamentary trusts for the benefit of minors, guardianships, and the designation of beneficiaries under life insurance policies (including the Servicemen's Group Life Insurance (SGLI)). Legal assistance will also be provided on preparing AMDs and anatomical gift designations. Legal assistance may be provided on other aspects of estate planning based on the availability of expertise and resources.

(1) Every service member for whom a will is prepared will be provided legal advice on designating beneficiaries under SGLI (or other insurance policies, as applicable) that will best carry out the service member's intent in light of his or her personal situation. As a matter of Army policy, attorneys will not recommend so-called "by-law" or "by-will" (or "to my-estate") SGLI beneficiary designations to any service member, regardless of military service affiliation. Where the insured is a soldier, "by-law" and "by-will" designations are prohibited. See AR 600-8-1 (20 Oct 94) and Appendix C of this regulation for guidance on assisting service members with SGLI beneficiary designations. Non-Army clients who indicate that they have directed their SGLI benefits to be distributed "by-law" should be advised of the effect this direction has on distribution of SGLI proceeds. In cases where an existing designation does not comport with a service member's wishes, or simply needs revision in the case of a soldier who has not replaced an existing "by-law" or "by-will" designation, the service member will be assisted on executing VA Form SGLV-8286 (Servicemen's Group Life Insurance Election and Certificate). This form may be obtained through normal publications channels. The form for soldiers will be executed in accordance with AR 600-8-1. Any designation or change of beneficiary by a soldier on a SGLV-8286 is not effective unless received by the custodian of the soldier's DA Form 201 (Military Personnel Records Jacket (MPRJ), U.S. Army) before the soldier's death. All clients should be advised to file newly executed forms in their military records. They should also be provided the telephone and room and building numbers (or address) of the custodian for those records.

(a) Attorneys who provide legal assistance should maintain sufficient copies of SGLV-8286 for use by their clients. Attorneys should not use any other form or continuation form to designate SGLI beneficiaries unless specifically approved by the proponent for AR 600-8-1 (20 Oct 94).

(b) Those providing legal assistance to soldiers during EDREs, REMOBES, MODREs, SRPs, and NEOs should request to be stationed before the personnel and finance sections so that soldiers can receive legal advice before they designate SGLI and final pay beneficiaries. This advice will be made available to soldiers regardless of whether or not wills are prepared for them.

(2) No will may be executed until an attorney interviews the client and reviews the will. An attorney shall be present to supervise the execution of the will and to review the will after the client and witnesses have signed it. The attorney who drafts the will shall insert his or her name on the will as its drafter, together with the designation for a state or other legal bar of which he or she is a member, using the following language: "This document was prepared under the authority of 10 U.S.C. § 1044 and implementing military regulations and instructions by (*name of attorney*), who is licensed to practice law in (*name of one State or other legal bar*)."

(a) When providing routine legal assistance, attorneys should encourage eligible clients who meet any of the criteria in para 3-6b(2)(b) to obtain wills, and should provide wills to all those who request them. The same legal and professional standards that apply to preparing and executing wills within an Army legal office apply to those that are prepared and executed during EDREs, REMOBES, MODREs, SRPs, and NEOs. Where those standards cannot be met, follow-up legal assistance appointments should be made to prepare or execute wills for soldiers who need them. In appropriate cases, soldiers may be encouraged to have wills (or new wills) drafted and executed following their mobilization or deployment.

(b) During mobilization or deployment, the priority and allocation of legal resources should be based on need. The absence of a will does not make a service member non-deployable. The need for a routine will by a service member being mobilized or deployed must be weighted against the needs of other service members for wills and other legal services (for example, resolving child custody, landlord-tenant, or consumer law problems). When legal resources are limited, the priority for drafting and executing wills should be given to service members to whom any of the following applies: (1) those who have a minor child; (2) those whose primary beneficiary is a minor; (3) those whose net estate (excluding insurance, jointly-owned property, and other non-probate property) is valued at more than \$10,000 (or a higher dollar limit if applicable law allows small estate administration for estates of lesser amounts); or (4) those who desire their property to be distributed in a manner different from that which would occur under the applicable laws of intestate succession or under an existing will. The drafting and execution of wills (or new wills) for all other service members may be delayed until such time that legal resources are available following mobilization or deployment.

(c) The execution of preprinted fill-in-the-blank wills is limited to clients domiciled in states that specifically authorize the execution of such wills. If authorized by statute, a properly drafted and executed fill-in-the-blank will complies with JAGC standards.

(3) Consistent with this regulation, every effort will be made to assist PNOK in probating wills and settling estates (particularly uncontested or exempt-from-administration proceedings) of service members who die while in a military duty status. (See paras 2-5a(9) and 3-7g(2)(d)). When available resources, personnel, or expertise are insufficient to provide the legal assistance required, clients should be referred to other attorneys who provide legal assistance or to civilian lawyers in accordance with para 3-7h. Attorneys assisting a PNOK with a problem related to a service member's designation of SGLI beneficiaries should review the provisions of Chapter 38, Code of Federal Regulations, Part 9 (Servicemen's Group Life Insurance and Veterans' Group Life Insurance) for restrictions on beneficiary entitlements.

(4) Priority will be given to handling the special needs of clients with life-threatening injuries or illnesses. With regard to service members, attorneys providing legal assistance should be generally familiar with the benefits payable from the military, the Department of Veterans' Affairs, and the Social Security Administration to the survivors of service members who die while on active duty or in a retired status. They should also be generally familiar with the reasons for carrying out so-called "death-bed retirements." Assistance in such cases may be obtained from the installation Physical Evaluation Board Liaison Officer, the installation Retirement Services Officer, or Legal Assistance Division, The Judge Advocate General, 2200 Army Pentagon, Washington DC 20310-2200. See AR 600-87, appendix C for a description of the Survivor Benefit Plan, and AR 40-3, chapter 8 regarding referral of cases to physical evaluation boards.